

HONORABLE TANA LIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NEXON KOREA CORPORATION, a Korean
Corporation,

Plaintiff,

v.

IRONMACE CO., LTD., a Korean
Corporation; JU-HYUN CHOI, individually;
and TERENCE SEUNGHA PARK,
individually,

Defendants.

Case No.: 2:23-cv-00576-TL

DECLARATION OF JAMES S.
BLACKBURN IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO
DISMISS FOR *FORUM NON*
CONVENIENS

NOTE ON MOTION CALENDAR:
JULY 14, 2023

ORAL ARGUMENT REQUESTED

I, James S. Blackburn, am over the age of 18, have personal knowledge of all the facts stated herein
and declare as follows:

1. I am a partner at the law firm Arnold & Porter Kaye Scholer LLP ("Arnold & Porter"),
which represents Plaintiff NEXON Korea Corporation ("Plaintiff" or "Nexon") in the above-
captioned litigation. The statements made below are true to the best of my knowledge and belief,
and if called upon, I could and would testify to those facts. I submit this declaration in support of
Nexon's Opposition to Defendants' IRONMACE Co., LTD. ("Ironmace"), Ju-Hyun Choi
("Choi"), and Terence Seungha Park ("Park") (collectively the "Defendants") Motion to Dismiss
on grounds of *forum non conveniens*.

Dark and Darker Playtests in the United States and the DMCA Takedown Requests

2. Based on my review of documents, Defendants conducted five alpha playtests and a quality assurance (“QA”) playtest for Dark and Darker. The first alpha playtest was conducted from August 19-21, 2022. The second playtest was conducted from October 28-November 2, 2022. The third playtest was conducted from December 16-26, 2023. The fourth playtest was conducted from February 6-16, 2023. The fifth and latest playtest was conducted from April 14-19, 2023. *See* Exhibit B to the Declaration of Yi-Kwon Hwang. Defendants also conducted a test from September 23-28, 2022 that they refer to as a “QA test.” Attached as **Exhibit A** is Defendants’ Discord post referencing the September QA test.

3. Defendants conducted the first four alpha playtests and “QA test” through a U.S. online gaming platform called Steam.

4. Steam is owned by Valve Corporation (“Valve”), an American videogame digital distributor headquartered in Bellevue, Washington.

5. Attached as **Exhibit B** is a true and correct copy of the “Steam Subscriber Agreement,” which states that Steam is owned by Valve, a Washington corporation.¹ According to Steam’s website, anyone seeking to distribute games through Steam must agree to the Steam Subscriber Agreement. *Id.* By its terms, the Steam Subscriber Agreement is “deemed to have been made and executed in the State of Washington, U.S.A., and Washington law, excluding conflict of law principles and the Convention on Contracts for the International Sale of Goods, governs all claims arising out of or relating” to the agreement and other related matters. *Id.* Furthermore, any dispute

¹ Also available at https://store.steampowered.com/subscriber_agreement/ [https://perma.cc/WZH8-7Q9A] (last accessed July 6, 2023).

1 under the agreement not subject to arbitration is subject to exclusive jurisdiction in the state and
2 federal courts of King County, Washington. *Id.*

3 6. At my direction, Arnold & Porter personnel analyzed the IP addresses accessed while
4 playing Dark and Darker, and observed that Defendants were using Amazon Web Services, Inc.,
5 (“AWS”) servers to host Dark and Darker. Furthermore, in a Discord post, Defendant Park
6 reported that Defendants “hit the max capacity offered to us by AWS.” Attached as **Exhibit C** is
7 a true and correct copy of Park’s September 26, 2022 post on Discord. AWS is a subsidiary of
8 Amazon.com, Inc. (“Amazon”) that provides on-demand cloud computing platforms and
9 application programming interface to individuals, companies, and governments.² AWS and
10 Amazon are both headquartered in Seattle, Washington.

11 7. According to the AWS Customer Agreement, for customers located in Korea (or the
12 United States), all disputes under the agreement are subject to binding arbitration under the United
13 States Federal Arbitration Act. Furthermore, the “Governing Laws” under the agreement are the
14 laws of Washington, and the “Governing Courts” with exclusive jurisdiction are the state and
15 federal courts in King County, Washington. Attached as **Exhibit D** is a true and correct copy of
16 the “AWS Customer Agreement.”³

17 8. For Defendants’ first playtest that took place in August 2022, Park posted on the “Dark
18 and Darker” server of Discord that the playtest was “meant to test basic online gameplay for North
19 America region” where “[p]layers can choose from either the ‘US West’ or ‘US East’ server when
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23 ² <https://www.aboutamazon.com/what-we-do/amazon-web-services> [https://perma.cc/3DRF-M5BR] (last accessed
July 6, 2023).

24 ³ Also available at <https://aws.amazon.com/agreement/> [https://perma.cc/B9D6-5Q9B] (last accessed July 6, 2023).

entering a match.”⁴ Attached as **Exhibit E** is a true and correct copy of Park’s August 20, 2022 post on Discord.

9. For the QA test in September 2022, Defendants posted on Discord that the playtest “hit the max capacity currently offered,” which “overloaded” the “US East server.” *See Exhibit C.* As a result, Park posted on Discord that players in the Eastern region of the United States should connect to the “US West” or “EU” servers to join the playtest. *Id.*

10. On March 22, 2023, on behalf of Nexon, I sent a takedown request pursuant to the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. Section 512(c), to Valve to remove Ironmace’s Dark and Darker from Steam for infringing on P3’s copyrights that are registered with the U.S. Copyright Office. In response to the DMCA takedown request, Valve removed Dark and Darker from Steam on March 25, 2023.

11. On April 14, 2023, Nexon filed a complaint against Defendants alleging claims for trade secrets misappropriation under the Defend Trade Secrets Act and copyright infringement under the Copyright Act in the District Court for the Western District of Washington. *See Dkt. 1.*

12. Because Dark and Darker was removed from Steam, Defendants could not conduct their fifth alpha playtest on Steam. As an alternative, Defendants conducted the fifth playtest by posting a BitTorrent link to the game on the “Dark and Darker” server on Discord and on Ironmace’s official Twitter page. A true and correct copy of Defendants’ April 14, 2023 announcement on Discord instructing players to download the game through a torrent is attached hereto as **Exhibit F**.

13. In the same announcement, Defendants stated that they could not service the fifth

⁴ Also available at <https://discord.com/channels/988365908009447485/988662112454836234/1010335015642603571> [https://perma.cc/G2BX-U5JM] (last accessed July 6, 2023).

1 playtest in Korea due to compliance issues with Korean game rating regulations thereby excluding
2 players located in Korea from the April 2023 playtest.

3 14. On April 20, 2023, after the completion of the fifth playtest, I received an email from
4 Valve, with a copy of the DMCA counter notification that was sent to Valve. A true and correct
5 copy of Valve's email is attached hereto as **Exhibit G**. The counter notification states Ironmace
6 "consents to the jurisdiction of the Western District of Washington" and agreed to "accept service
7 of process from the person who submitted the takedown notification under 17 U.S.C. section
8 512(C)(1) or their agent." A true and correct copy of the counter notification is attached hereto as
9 **Exhibit H**.

10 15. Valve stated in its notice of Ironmace's counternotification that "[i]f we do not receive
11 a copy of the legal complaint within the 10-business-day period, we will reinstate the content." I
12 accordingly informed Valve of the pendency of this action.

13 **Defendants' Marketing Strategy**

14 16. Arnold & Porter personnel reviewed Ironmace's Discord and Twitter accounts and
15 observed that Ironmace communicated with Dark and Darker players in English by posting on the
16 "Dark and Darker" server on Discord, and on Ironmace's official Twitter account. Ironmace
17 communicated with Dark and Darker players about the playtests via Twitter, posting in English on
18 an account with over 35,000 followers. Attached hereto as **Exhibits I and J** are true and correct
19 copies of screenshots of Dark and Darker's Ironmace's Discord server and Ironmace's Twitter
20 accounts.

21 17. Arnold & Porter personnel also reviewed interviews conducted by Park in English with
22 YouTube channels targeted at U.S. gamers about Ironmace's background and its future plans for
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Dark and Darker.⁵ In these interviews, Park discusses the background of Ironmace, playtests, details about Dark and Darker, and future plans including new features, early access, cost estimate, etc.

18. Defendants also engaged in English-language discussions about Dark and Darker on Discord. For example, on March 5, 2023, a “Discord Q&A” with Defendant Ironmace’s main developer with the ID name “SDF” was posted on Google Documents. As I explained in a prior declaration, Nexon believes that Defendant Choi is associated with “SDF” social media accounts. *See* Dkt. 16 ¶ 14. The document is entirely in English and includes detailed questions and answers about the new features of Dark and Darker and the future plans of Ironmace.⁶ Attached hereto as **Exhibits K** is a true and correct copy of the March 5, 2023 Discord Q&A transcript available on Google Documents.

19. Defendants also engaged in an interactive public relations strategy targeting the United States. During one of the playtests, Ironmace posted on Discord and Twitter that “[t]here is something out there waiting for you...” and directed players to a message with an image of “Rat Rock,” a codename for Central Park in Manhattan, New York. There, players found a QR code glued under a bench located in Central Park, with the password “wakeup.” Ironmace instructed the players in the United States to find the password and send Ironmace a direct message of the

⁵ *See, e.g.*, <https://www.youtube.com/watch?v=B9UpmeHDgIc> [https://perma.cc/D5CR-FF2]; https://www.youtube.com/watch?v=CsemYNS6n_8 [https://perma.cc/BR6W-G2VL]; https://www.youtube.com/watch?v=B_tYY0B3OrA [https://perma.cc/639Z-H2T8]; <https://www.youtube.com/watch?v=8xpzCTvaNBQ&t=474s> [https://perma.cc/RL62-NCYN] (last accessed July 6, 2023).

⁶ Available at https://docs.google.com/document/d/1LMBS8k7I9gXt_q2A9yHkmsa8iA63ttxC10tVmyTnREs/edit [https://perma.cc/AQ7T-NKMQ] (last accessed July 6, 2023).

password once discovered. Attached hereto as **Exhibit L** is a true and correct copy of Ironmace's Twitter post announcing the password hunt in Central Park in Manhattan, New York.⁷

20. Defendants also recently announced that they entered into a partnership with Madrin Coffee, a company located in St. Louis, Missouri. Pursuant to that partnership, Madrin Coffee offers a box of coffee products and a novelty tankard. The box is emblazoned with imagery from Dark and Darker. **Exhibit M** is a true and correct copy of Madrin Coffee's website advertising the Dark and Darker box set.⁸

Defendants Suggest a Launch of Dark and Darker

21. Defendants continue to express an intent to launch of Dark and Darker. For example, Defendant Park stated on May 9, 2023 that Ironmace is "working on a ton of things to ensure the game gets out to you as soon as possible." Attached hereto as **Exhibit N** is a true and correct copy of this post.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 10th day of July 2023 at Los Angeles, California.


James S. Blackburn (*pro hac vice*)

⁷ Ironmace's post is available at <https://twitter.com/IronmaceGames/status/1619727304938389504> [https://perma.cc/TQ5B-P3MX] (last accessed July 6, 2023).

⁸ Available at <https://madrincoffee.com/products/dark-darker-box-set> [https://perma.cc/RJ7Y-PB34] (last accessed July 6, 2023).